

RCA SDN. BHD.

a

v.

PEKERJA-PEKERJA RCA SDN. BHD. & ORS.

SUPREME COURT, KUALA LUMPUR

LEE HUN HOE CJ (BORNEO)

HARUN HASHIM SCJ

GUNN CHIT TUAN SCJ

[CIVIL APPEAL NO. 02-235-89]

1 NOVEMBER 1990

b

LABOUR LAW: *Union - Registration - Recognition - Dispute under the Industrial Relations Act 1967 - Whether injunction should stay - Section 8 Industrial Relations Act 1967.*

c

CIVIL PROCEDURE: *Injunction - Interim injunction - Principles to be followed - Effect of - Giving remedy without going to trial - Exceptional circumstances - Whether injunction determines any contested issue.*

The 1st plaintiff is a trade union (the union) and the 2nd to 16th plaintiffs (the respondents) are employees of RCA, the appellant. An in-house union was registered after which the union sought to obtain recognition of the union of RCA. There ensued a dispute between the parties as to trade union activities at the company's premises; this was based on Circulars No. 4/89, 8/89 and letter dated 25 April 1989 issued by RCA.

d

The union lodged a formal complaint with the Director-General of Industrial Relations under s. 8 of the Industrial Relations Act 1967 (the Act), alleging that RCA had contravened s. 7 of the Act. The respondents then sought various declarations and injunctions against RCA; the union and the respondents applied for an interim *ex parte* interim injunction against RCA in relation to one of the reliefs claimed for; this was granted. RCA's application for dissolution of the injunction was dismissed; RCA now appeals that dismissal.

e

The respondents argue that as there is no provision in the Act for a stay order to preserve the *status quo*, the respondents had no other alternative but to seek the Court's aid by way of an interim injunction. Circular No. 8/89 was in English and Bahasa Malaysia; however the proviso to s. 7(a) was not translated into Bahasa Malaysia.

f

Held:

[1] The subject matter of this dispute was regulated by the Industrial Relations Act which confers right on employers and employees and the remedies in the event of any breach of such rights.

g

[2] (a) The effect of the interim injunction granted in the present case is to give to the respondents what they really want all along which they never had before without going to trial.

(b) An interim injunction which virtually gives the full relief sought to be secured at the trial is never granted save in exceptional and extremely rare cases.

h

[3] In the present case there are no exceptional circumstances to warrant the granting of an injunction at the present stage; the only real circumstance here is that but for the injunction there will be some inconvenience to the respondents in its membership drive.

i

a [4] The granting of the injunction may, by implication, cause embarrassment to the Minister, the Industrial Court and eventually to the High Court in the determination of the issue as to the application of the proviso to s. 7(a) of the Act and whether it applies as to its extent and circumstances in the present dispute between the parties because the granting of the injunction has pre-determined that issue; as the injunction has that effect, it should not have been granted.

b *[Appeal allowed. Injunction dissolved.]*

Cases referred to:

Electrical Industry Workers Union v. Registrar of Trade Unions & Anor. [1976] 1 MLJ 177
Harold Stephen & Co. Ltd. & Ors. v. Post Office [1978] 1 All ER 939
Mangai v. Government of Sarawak & Anor. [1970] 2 MLJ 41
c *Metal Industry Employees Union v. Registrar of Trade Unions* [1976] 1 MLJ 220
Sivaperuman v. Heah Seok Yeong Realty Sdn. Bhd. [1979] 1 MLJ 150
Wilkinson v. Banking Corporation [1948] 1 KB 722

Legislation referred to:

Industrial Relations Act 1967, ss. 4, 5, 7, (a), 8
 Specific Relief Act 1950, ss. 50, 51(1)
d *For the appellant - V.T. Nathan (Peh Lee Kheng with him); M/s. Shearn Delamore & Co. & Drew & Napier*
For the respondents - Sulaiman bin Abdullah (Sivarasa Rasiah with him); M/s. Zain & Co.

JUDGMENT

Harun Hashim SCJ:

e The first plaintiff is a trade union (the union) and the second to the sixteenth plaintiffs (the plaintiffs) are employees of a semiconductor manufacturing company (the defendants) which has been in operation since 1974. According to the plaintiffs, the government, as a matter of policy, had for years not allowed the formation of trade unions in the electronics industry until September 1988 when the Minister for Labour announced that it would allow the formation of in-house trade unions in the industry.

f On 21 January 1989 about 60 employees of the defendant company held a meeting to form an in-house union and elected a pro-term committee. They applied for registration of the union on 23 January 1989 which was approved by the Registrar of Trade Unions on 31 January 1989. On 1 February 1989, the union informed the company that it had been registered.

g The next step is to obtain recognition of the union by the company. In order to be accorded recognition, the union must have as its members more than 50% of the employees of the company who are eligible to join the union. They set about to enlist the employees of the company as members of the union.

h The plaintiffs allege that the management is strongly opposed to the establishment of the union and has resorted to intimidation, harassment and victimisation of its employees to prevent them from joining the union and forced the resignation of those who have joined. In particular, the company has prohibited the union officials from distributing membership application forms and collection of union dues on the company's premises.

i On 1 March 1989, the company issued HR Circular No. 4/89 which is a reminder of the company's rules of conduct which prohibits:

- (a) employees from re-entering the company's premises after work;

a
- (b) distribution of any literature during working hours or literature which are not job related;
- (c) inter plant movement of employees during working hours except on company business; and
- (d) collection of moneys without the approval of the management.

b

The union then complained to the Minister, the Director-General of Labour and the Registrar of Trade Unions that the defendants were harassing and intimidating the employees. As a result, a meeting was held at the Department of Industrial Relations on 7 March 1989 which was attended by representatives of the company and the union. The parties agreed in a memorandum of understanding to recognise and respect each other's legal rights and not to interfere with such rights to ensure industrial peace and harmony at the work place. *c*

On 2 April 1989, the union held its first annual general meeting outside the company's premises. It is alleged that this meeting was interfered with by officers of the company and the police had to be called in. On 10 April 1989 the union lodged a formal complaint with the Director-General of Industrial Relations with regard to this interference.

On 15 April 1989, the union informed the defendants the names of employees of the union who were elected office-bearers of the union at the annual general meeting on 2 April 1989 and that the union will be undertaking a membership drive which would involve the distribution of membership application forms and collection of union dues. It asked for defendants' co-operation and gave an undertaking that the union activities will not interfere with the company's operations. It, however, involves union representatives re-entering the company's premises after working hours. The defendants by letter of 25 April 1989 in reply said that the union representatives will not be permitted to re-enter the company's premises after working hours. It also said that all union activities should be conducted after working hours and outside the company's premises on the ground that it might create tension and misunderstanding between groups of employees. On the same day the company issued IR Circular No. 8/89 drawing attention to s. 7 of the Industrial Relations Act 1967 viz. prohibition on workmen and their trade unions in respect of persuading workers from joining or refraining from joining a trade union during working hours and the company's regulations on pain of disciplinary action. The circular is in English and Bahasa Malaysia but the plaintiffs took exception to the fact that the proviso to s. 7(a) that the prohibition does not apply to workers employed in the same undertaking when the act does not interfere with normal duties was not translated into Bahasa Malaysia. On 13 May 1989, the union lodged a formal complaint with the Director-General of Industrial Relations under s. 8 of the Industrial Relations Act, that the defendants had contravened s. 7. *d*

On 23 May 1989, the plaintiffs filed an originating summons seeking:

- (a) a declaration that HR Circular No. 4/89 and the letter of 25 April 1989 are in breach of the plaintiffs' rights under Article 10 of the Constitution;
- (b) a declaration that HR Circular No. 4/89 and the letter of 25 April 1989 are in breach of the plaintiffs' rights under ss. 4, 7 & 9 of the Industrial Relations Act 1967;

e
- (c) a declaration that HR Circular No. 4/89 and letter of 25 April 1989 are in breach of the memorandum of understanding of 7 March 1989;
- (d) an injunction that the defendants be restrained from interfering with the plaintiffs' rights under s. 9 of the Industrial Relations Act 1967;

f

a (e) an injunction that the defendants be restrained from interfering with restraining from or coercing the second to sixteenth plaintiffs in the exercise of their rights to participate in the activities of the union and in particular in the distribution of union circulars, membership application forms and collection of union dues during the non-working hours on the company's premises during all three working shifts.

b On 23 May 1989, the union and plaintiffs applied *ex parte* for an interim injunction in respect of prayer (e) which was granted by the learned Judge on 29 May 1989 in the following terms:

c It is ordered that the defendants by their agents or servants or howsoever or otherwise be restrained from preventing or in any way interfering with the plaintiffs or their agents or servants in distributing union membership forms and collecting union dues from employees of the defendant in all three shifts during their non-working hours on the defendant's premises until after the hearing of this action or the disposal by the Industrial Court the complaint by the first plaintiff or until further order and that the costs of this application be costs in the cause.

with the usual undertaking as to payment of damages.

d On 6 June 1989, the defendants applied to have the injunction dissolved which was dismissed by the learned Judge on 12 June 1989. Hence this appeal.

e An injunction is a preventive relief granted at the discretion of the Court: s. 50 Specific Relief Act 1950. A temporary injunction may be granted pending the hearing of any matter before the Court: s. 51(1). It is settled law that an interim injunction may be granted to preserve the *status quo* pending the trial of an action. It was argued in the instant case that as there is no provision in the Industrial Relations Act 1967 for a stay order to preserve the *status quo*, the plaintiffs had no other alternative but to seek the Court's aid by way of an interim injunction. This argument however overlooks two important factors.

f Firstly, whether there was in fact a cause of action before the Court. On the facts, it is clear that the dispute between the parties concern trade union activities at the company's premises. Such activities are regulated by the Industrial Relations Act which confers rights on employers and employees and the remedies in the event of any breach of such rights. Gill FJ speaking for the Federal Court in *Manggai v. Government of Sarawak & Anor.* [1970] 2 MLJ 41 said at p. 44:

It is well settled law that the Court will not make a declaratory judgment where an adequate alternative remedy is available.

g and quoted with approval the statement of Lord Asquith in *Wilkinson v. Banking Corporation* [1948] 1 KB 722 at p. 724:

It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

h See also *Metal Industry Employees Union v. Registrar of Trade Unions* [1976] 1 MLJ 220 and *Electrical Industry Workers Union v. Registrar of Trade Unions & Anor.* [1976] 1 MLJ 177.

i In the instant case, s. 4 of the Industrial Relations Act provides that an employer shall not interfere with, restrain or coerce a workman in the exercise of his rights to join a trade union and to participate in its lawful activities; s. 5 prohibits employers from discriminating employees who are members of a trade union or threaten employees with dismissal should

they want to join the union; s. 7 prohibits workmen from persuading others to join a trade union during working hours without the consent of the employer; and s. 8 provides the remedy against contravention of ss. 4, 5 and 7.

In the present case the plaintiffs lodged a formal complaint under s. 8 with the Director-General of Industrial Relations on 13 May 1989. Upon receipt of the plaintiffs' attempt to exercise such right. This is precisely the dispute the plaintiffs complained of to the Director-General of Industrial Relations under section 8. We are therefore of the view that there was no *status quo* to be preserved by an interim injunction.

The effect of the interim injunction granted in the present case is to give to the plaintiffs what they really want all along which they never had before without going to trial. An interim injunction which virtually gives the full relief sought to be secured at the trial is never granted save in exceptional and extremely rare cases: *Sivaperuman v. Heah Seok Yeong Realty Sdn. Bhd.* [1979] 1 MLJ 150, the Federal Court at p. 151 quoting with approval Geoffrey Lane LJ in *Harold Stephen & Co. Ltd. & Ors. v. Post Office* [1978] 1 All ER 939 at 944:

It can only be in very rare circumstances and in the most extreme circumstances that this Court should interfere by way of mandatory injunction in the delicate mechanism of industrial disputes and industrial negotiations.

In the present case there are no exceptional circumstances to warrant the grant of an injunction at the present stage. The only real circumstances here is that but for the injunction there will be some inconvenience to the plaintiffs in its membership drive.

Finally, the grant of the injunction by implication may cause embarrassment to the Minister, the Industrial Court and eventually to the High Court in the determination of the issue as to the application of the proviso to s. 7(a) of the Industrial Relations Act and if it applies as to its extent and circumstances in the present dispute between the parties because the grant of the injunction has pre-determined that issue. As the injunction has that effect it should not have been granted: *Electrical Industry Employees Union v. Registrar of Trade Unions* (*supra*) at p. 181.

For the reasons stated, we allowed the appeal with costs and dissolved the injunction.

Also found at [1991] 1 CLJ 19

a

b

c

d

e

f

g

h

i